

10 of 6/3/73

MODIFICATION TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN THE DIRECTOR, STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE REGIONAL ADMINISTRATOR,
REGION 10 OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Memorandum of Agreement approved September 26, 1973, by the Administrator of the United States Environmental Protection Agency between the Director, State of Oregon Department of Environmental Quality (hereinafter, the "State") and the Regional Administrator, United States Environmental Protection Agency (hereinafter, "EPA") Region 10 is hereby modified as follows:

1. Federal Facilities

The State will administer the NPDES permit program with respect to Federal facilities and has shown that it has the authority to enter and inspect Federal facilities. The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in Oregon, including permits applicable to Federal facilities. All references in the Memorandum of Agreement which have the effect of retaining responsibility to EPA Region 10 over Federal facilities have no force or effect after the effective date of this Modification.

2. Waiver Provision

A. Except as hereafter expressly provided, EPA waives the right to comment on or object to the sufficiency of permit applications, proposed draft permits and final adopted permits for discharges or proposed discharges from: (1) publicly-owned treatment works with a daily average discharge of 0.5 MGD or less; (2) other discharges with a daily average discharge of less than 0.1 MGD; (3) discharges of uncontaminated cooling water with a daily average discharge of 1.0 MGD or less; (4) log pond discharges not receiving process waste waters; (5) discharges of backwash water from water filtration plants; and (6) discharges from fish hatchery and rearing facilities; provided, that the above listed waivers shall not apply to any of the following discharges, regardless of size: (1) discharges to the territorial sea, waters of the contiguous zone, or the oceans; (2) discharges which affect the waters of any other State; (3) discharges which contain toxic pollutants; (4) or major dischargers.

B. The foregoing does not include waiver of receipt of complete copies of NPDES applications, public notices of permit applications (and any required fact sheets), notices of public hearings, and copies of all final NPDES permits issued.

C. The Regional Administrator reserves the right to terminate the foregoing waiver, in whole or in part or with respect to any specific discharger, at any time. Such termination shall be accomplished in writing, shall set forth the reasons for the termination, and provide the Department with an opportunity to take any action that may be necessary to reinstate the waiver.

D. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal or State laws, rules, regulations, policies or guidelines, nor to relinquish the right to EPA to petition the State for review of any action or inaction because of violation of Federal or State laws, rules regulations, policies or guidelines.

E. These waiver provisions override any contrary or inconsistent language in the Memorandum of Agreement approved on September 26, 1973.

3. EPA Review of Proposed Permits Which Have Not Been Waived

The section Environmental Protection Agency Review on pages 8 and 9 of the MOA is hereby deleted, and is replaced by the following:

A. At the time the proposed permit is put on public notice, two copies of the permit will be given to Region 10 of the Environmental Protection Agency, via the Oregon Operations Office, for review.

B. For all nonwaived permits EPA shall have up to 30 days from receipt of the proposed permit to provide comments to the Department.

C. At the conclusion of the period for applicant review and public participation, a final permit will be drafted. The Department may issue the permit without further EPA review, under the following conditions;

a. No concerns were expressed by EPA during the review pursuant to paragraph B above; and

b. No changes have been made in the proposed permit which was provided for EPA review under paragraph B above; and

c. No significant adverse comments were received during the public notice period.

D. All other proposed final permits not covered in paragraph C above, and for which the right to EPA review has not been waived, shall be sent to the EPA, via the Oregon Operations Office, for review pursuant to 40 C.F.R. 124.47. EPA shall have up to 30 days from receipt of the proposed permit to comment upon, object to, or make recommendations with respect to, the proposed permit. Upon request, the EPA shall have an additional 60 days in which to provide comments. Also, whenever the Regional Administrator notifies the Director of a general objection to a permit within the 30 day review period, he shall have the full 90 days from receipt of the proposed final permit in which to provide a statement of the reasons for the objection (including the section of the Act or regulations that support the objection), and the actions that must be taken by the Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).

E. Upon receipt of an objection, the Director shall assure that the permit, in its proposed form, is not issued. Within 90 days of receipt of an objection, the Director may request that a public hearing be held on the objection. Upon receipt of a request for public hearing, the Regional Administrator shall provide public notice and shall hold a public hearing. At the conclusion of the hearing, the Regional Administrator shall; (1) reaffirm the original objection; (2) modify the terms of the objection; or (3) withdraw the objection, and shall notify the Director of this decision.

F. The Regional Administrator may issue a permit if: (1) the Director does not resubmit a permit revised to meet the objection or modified objection within 30 days of the notification of the Regional Administrator's decision following a hearing; or (2) if the Director does not request a hearing and does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of the receipt of the objection.

4. Effective Date

These Modifications will become effective upon approval by the Administrator. Nothing in these Modifications shall be construed to limit the authority of EPA to take action pursuant to sections 308, 309, 311, 402, 504, or other sections of the Clean Water Act (P.L. 92-500 as amended by P.L. 95-217, formerly referred to in the Agreement as the FWPCA).

Director, Oregon Department
Environmental Quality

Regional Administrator of
U.S. Environmental Protection Agency
Region 10

By William H. Young

Date 1/15/79

By [Signature]

Date 1/26/79

Approved:

[Signature]
Acting Administrator

United States Environmental Protection Agency

Date MAR 2 1979

Memorandum of Agreement
between
Director, State of Oregon
Department of Environmental Quality;
and
Regional Administrator, Region X of the
Environmental Protection Agency

The Regional Administrator of Region X of the Environmental Protection Agency (hereinafter referred to as the Regional Administrator), and the Director of the State of Oregon Department of Environmental Quality (hereinafter referred to as the Director) have entered into this Memorandum of Agreement to delineate the responsibilities of Region X of the Environmental Protection Agency and the State of Oregon Department of Environmental Quality (hereinafter referred to as the Department) for operation of a cooperative State-Federal permit program. The agreement establishes policies and procedures for issuance of National Pollutant Discharge Elimination System permits in the State of Oregon in accordance with the 1972 Amendments to the Federal Water Pollution Control Act (P.L. 92-500), and provides broad guidance between Region X of the Environmental Protection Agency and the Department. The Oregon Operations Office of the Environmental Protection Agency shall provide technical assistance to the Department to help implement this agreement.

POLICIES

1. It shall be policy of Region X of the Environmental Protection Agency and the Department to fully coordinate and cooperate in the issuance of waste discharge permits under the National Pollutant Discharge Elimination System.

2. As provided in Section 101(f) of the Federal Water Pollution Control Act Amendments of 1972, it shall be the policy of Region X of the Environmental Protection Agency and the Department to minimize paper work and interagency decision procedures, and to make the best use of available manpower and funds,

so as to prevent duplication of effort and unnecessary delays.

3. In accordance with national policy as expressed in Section 101(b) of the Federal Water Pollution Control Act Amendments of 1972, it is recognized that the issuance of NPDES permits and enforcement actions necessary for the protection and enhancement of waters in Oregon are the primary responsibilities of the State. The Environmental Protection Agency has a primary role in providing policy guidance, and financial and technical assistance; and has an interest in the issuance of permits and related enforcement matters.

4. Based on a delegation of authority pursuant to Section 402, the Department, under existing State statutes and regulations, shall process and issue National Pollutant Discharge Elimination System waste discharge permits which are consistent and compatible with the Federal Water Pollution Control Act Amendments of 1972 and with regulations and guidelines promulgated thereunder. The Regional Administrator shall provide written agreement with, objection to, or recommendations on, each NPDES permit to be issued. The Director shall not issue any NPDES permit to which the Regional Administrator has objected.

5. The Department, with technical assistance from, and review by, the Region X of the Environmental Protection Agency, shall have the responsibility for issuance of all NPDES permits in the State of Oregon, except for point source discharges from Federal facilities. Region X of the Environmental Protection Agency, with technical assistance from, and review by, the Department, shall have the responsibility for issuance of NPDES permits for point source discharges from Federal facilities.

6. It shall be the goal of the Department to issue NPDES permits to all dischargers in the State of Oregon by December 31, 1974. The Department and the Oregon Operations Office shall make fiscal year plans with quarterly

milestones (in coordination with the Annual State Water Strategy) to accomplish this goal. Progress toward accomplishment of the milestones shall be reviewed by the Department and Region X of the Environmental Protection Agency on a quarterly basis.

PROCEDURES

The procedures to be used to implement the NPDES permit program and the functional relationships between the Department and Region X of the Environmental Protection Agency are outlined in the following sections.

Transfer of NPDES Files from EPA

Immediately upon approval of the State of Oregon permit program submittal, Region X of the Environmental Protection Agency shall deliver to the Department all relevant data collected prior to final approval, including:

1. Copies of all complete and pending Refuse Act and NPDES applications received by the Environmental Protection Agency for facilities in the State of Oregon, including copies of all correspondence between applicants and EPA regarding such applications. Each application and related correspondence shall be organized in a separate file to facilitate incorporation into department files. Note: In order to initiate preparation of some NPDES permits prior to the final approval of the State of Oregon permit program, copies of specified NPDES applications shall be submitted to the Department upon request.
2. A listing of all facilities in the State of Oregon which have been determined by the Environmental Protection Agency to not require NPDES permits, or which had been determined previously by the Corps of Engineers to not require Refuse Act permits.
3. Copies of any fact sheets, public notices, and proposed permits drafted by the Environmental Protection Agency for facilities applying for

Refuse Act or NPDES permits in the State of Oregon.

4. Any other documents, reports, or other pertinent data on facilities in the State of Oregon which have applied for NPDES permits.

At the time the files are transferred to the Department, Region X of the Environmental Protection Agency shall provide a listing of those applications which are considered to be incomplete or otherwise deficient for preparation of a permit. The procedures outlined in the following section will be used by the Department for completing and correcting deficiencies in transferred applications and any NPDES applications received after final program approval.

NPDES Application Review

1. All applications received by the Department from the Environmental Protection Agency or directly from applicants shall be reviewed initially for such items as proper signature, missing or questionable information, use of proper application form, and proper facility identification. Applications which are obviously incomplete or unsigned shall not be accepted by the Department for filing and shall be returned to the applicants for completion. Applications which appear complete shall be accepted by the Department for filing and a copy promptly transmitted to the Regional Administrator via the Oregon Operations Office.

2. Each NPDES application accepted for filing shall then be reviewed by the Department, with assistance from the Oregon Operations Office, for adequacy of information, possible need for additional information and forms, and any other potential deficiencies. The Department shall contact the applicant to obtain any additional information, documents, reports, or forms necessary to complete the application. The application shall be considered

to be withdrawn if the applicant fails to submit the requested information within 90 days of the request.

3. The Oregon Operations Office will review NPDES applications to determine if the forms are incomplete or deficient and to identify any discharges less than 50,000 gallons per day which are not minor discharges. The Regional Administrator will notify the Director in writing of any deficiencies or need for additional application forms. The Director will send the Regional Administrator any necessary information to complete the application and, if the Regional Administrator so requests, shall not issue the NPDES permit until notice is received from the Regional Administrator that the information is sufficient.

4. A copy of each completed NPDES application shall be sent to the Regional Administrator via the Oregon Operations Office, within 15 days after completion; for information and entry into the National Data Bank.

5. The Director will not accept any record, report, or information on NPDES forms which is purported to be confidential unless the confidentiality has first been confirmed by the Regional Administrator. When the information, if made public, would divulge a secret process, device, or method of manufacturing or production entitled to protection as trade secrets and has been determined by the Regional Administrator to warrant confidential status, the Director will then receive such information and, upon a showing satisfactory to him, shall classify it as confidential in accordance with ORS 449.160 (2), as amended by Section 6, Chapter 835, Oregon Laws, 1973.

Upon a showing satisfactory to the Director by any person that information submitted, which is not on NPDES forms, would, if made public, divulge a secret process, device, or method of manufacturing or production entitled to

protection as trade secrets of such person, the Director shall classify such information as confidential in accordance with ORS 449.169 (2), as amended by Section 6, Chapter 835, Oregon Laws, 1973.

6. Any information afforded confidential status, as provided in paragraph 5 above, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential. Effluent data will not be considered as confidential.

Preparation of Proposed Permits, Public Notices, and Fact Sheets

1. The Department shall have an evaluation report prepared to verify application information, gather additional information, and recommend necessary corrective actions and permit conditions.

2. Based on the evaluation report, a tentative determination to issue or deny a permit shall be made, and the necessary conditions and requirements shall be incorporated into a proposed permit, fact sheet (where applicable), and public notice.

3. If the tentative determination is to deny a permit, the Department shall notify the applicant of such intent and provide a copy of the determination to the Regional Administrator.

4. If the tentative determination is to issue a permit, a permit shall be drafted and issued in accordance with OAR 340-45-035.

5. Region X of the Environmental Protection Agency, through the Oregon Operations Office, shall provide technical assistance to the Department in the interpretation of effluent guidelines and other Federal regulations; preparation of public notices, fact sheets, and permits for major municipal and industrial waste sources; and review of all proposed NPDES permits for

compliance with Federal regulations.

Public Participation

1. The Department will widely distribute the public notices and fact sheets (where applicable), based on established general and county mailing lists. Copies of all public notices will be provided for parties on the general mailing list, which includes major conservation groups, State agencies, Federal agencies, interested citizens, and newspapers with statewide circulation. Copies of public notices for discharges in a particular county will be provided to all parties on the appropriate county mailing list. This mailing list includes local conservation groups, local governmental agencies, county planning commissions, councils of government, county health departments, interested citizens, and the local news media. Public notices to newspapers will be marked for publication as a "news item only." Fact sheets will be provided to any interested party upon request. Any interested party will be included on the general and county mailing lists for public notices and fact sheets upon request.

2. Copies of all public notices, fact sheets, and proposed permits will be provided to Region X of the Environmental Protection Agency, the Corps of Engineers, the Bureau of Sport Fisheries and Wildlife, National Marine Fisheries Service, and adjacent states for sources which may affect them.

3. All public notices will provide a 30-day period for submission of written comments and opportunity for request of a public hearing on the activity. All non-confidential records and information, including fact sheets, proposed NPDES permit provisions, applications, and other supporting documents will be available for public inspection and copying at the Department headquarters. They shall also be available for inspection at the

Department's field offices.

4. All comments received in response to a public notice will be evaluated by the Department, with technical assistance from the Oregon Operations Office, to determine if the proposed permit should be denied, modified, or issued; or if a public hearing should be held. A public hearing may be scheduled, at the discretion of the Director, if sufficient interest is shown or significant comments are received on a public notice.

Environmental Protection Agency Review

1. The Department will provide the Oregon Operations Office with an internal draft of proposed NPDES permits, fact sheets, and public notices. The Oregon Operations Office will promptly review these internal drafts and submit written comments, if it has any. The Department will consider these comments as the proposed permits, fact sheets, and public notices are finalized.

2. At the time the proposed permit, fact sheet, and public notice are sent to the applicant for his review, two copies will be given to Region X of the Environmental Protection Agency, via the Oregon Operations Office, for its information.

3. At the conclusion of the period for applicant review and public participation, a final permit will be drafted. Two copies of the final permits will be sent to Region X of the Environmental Protection Agency, via the Oregon Operations Office. The Regional Administrator will, within 30 days after receiving the final permit, provide written agreement with, objection to, or recommendations on each permit, unless a time extension is specifically requested. In the event a time extension is requested, the Regional Administrator will have up to an additional 60 days in which to provide comments to the Department.

4. The Department will consider all written comments by the Regional Administrator prior to final issuance of an NPDES permit. Modifications recommended by the Regional Administrator, including requests for additional monitoring, will be incorporated into final NPDES permits by the Department, unless it can be demonstrated that the changes would not be applicable or appropriate. No NPDES permits to which the Regional Administrator objects will be issued by the Department.

Issuance of Permit or Notice of Intent to Deny

1. The final NPDES permit will be forwarded to the permit applicant, thus constituting issuance of the permit. A copy of each permit and transmittal letter will be forwarded to the Regional Administrator.

2. If the final determination is that a permit will not be issued, notice of intent to deny shall be given in accordance with regulations of the Department.

Modification, Suspension, or Revocation of NPDES Permits

When the Department finds it necessary or advisable to modify, suspend, or revoke an NPDES permit in whole or in part for cause or for any other reason, the procedures outlined in OAR 340-45-055 and 060 will be followed. In addition to those procedures, the Regional Administrator will have up to 30 days to review and comment on proposed modifications. No modification of an NPDES permit to which the Regional Administrator objects will be made.

COMPLIANCE MONITORING

1. The Department will review and evaluate, for possible permit violations, all notices received from publicly owned treatment works for introduction of pollutants into such treatment works from new sources, any substantial change in volume or character of pollutants being introduced

into the treatment works at the time the permit is issued, and progress toward compliance with toxic and pretreatment standards by each subject industrial user. Copies of all such notices received by the Department from publicly owned treatment works will be provided to the Regional Administrator upon written request.

2. The Department will review and evaluate NPDES monitoring data, as received, for possible violations of terms and conditions of the permit. If the Director determines that any conditions of the permit are violated, he will notify the permittee and the Regional Administrator of the alleged violations. The Department will have primary responsibility for taking appropriate enforcement actions requiring compliance with the permit conditions.

3. The Department will make available, within 15 days of receipt, copies of all NPDES monitoring forms and data to Region X of the Environmental Protection Agency, via the Oregon Operations Office, for inclusion in the National Data Bank. The Environmental Protection Agency, upon request, shall provide data summaries and other printouts to the Department.

4. The Regional Administrator may object, in writing, to deficiencies in NPDES reporting forms received from the Department. The Director will insure that any deficiencies identified by the Regional Administrator are corrected.

5. The Department will immediately notify the Regional Administrator of any actual or threatened endangerment to the health or welfare of persons resulting from the discharge of pollutants.

ENFORCEMENT

1. The Department will have primary responsibility for taking appropriate enforcement actions against persons in violation of NPDES permits.

2. The Regional Administrator will be advised of the enforcement action taken or proposed to be undertaken by the Department, whether such enforcement action is administrative, criminal, or civil in nature, or a combination thereof.

3. The Department will advise the Regional Administrator of progress of enforcement proceedings and related matters. The Regional Administrator will receive a copy of any administrative or judicial order or directive related to compliance and will be advised of any violations of orders or directives and of proposed enforcement action to be undertaken. Upon request of the Director, the Regional Administrator will participate in administrative enforcement hearings and provide staff assistance in any public hearing related to enforcement.

4. Whenever the Regional Administrator, under authority in Section 309 (a) (1) makes a finding of a violation of a waste discharge permit, the Director of the Department and the person in alleged violation will be notified. The Director will immediately respond to such notification by advising the Regional Administrator of the action proposed with respect to such violation. The Regional Administrator generally intends to undertake direct enforcement action under Section 309(a) (3) only when the Department does not take appropriate enforcement action.

WELL DISPOSAL

1. The discharge of pollutants to abandoned wells, deep injection wells, or any other wells which intercept groundwater zones will be controlled by the Department through issuance of a waste discharge permit. Any such disposal will be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources. Any permit issued shall be issued in accordance with requirements specified in Part 124, Title 40 CFR.

2. The Regional Administrator will transmit to the Department any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the 1972 Amendments to the Federal Water Pollution Control Act or in directives issued to Region X of the Environmental Protection Agency concerning the disposal of pollutants into wells.

3. The discharge of pollutants to evaporation basins, irrigation farms, seepage pits, leachate ditches, and shallow waste disposal wells or drainholes shall be controlled in accordance with Department regulations in order to assure that no pollutant is discharged directly to ground or surface water resources.

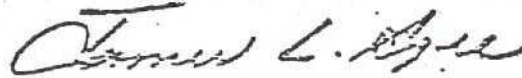
4. The Department will continue to phase out shallow waste disposal wells (drainholes) in accordance with OAR 340, Division 4, Subdivision 4. If the Department determines that any drainholes are discharging directly or pose an imminent threat to surface waters or groundwaters, a waste discharge permit will be required in accordance with paragraph 1 above.

AMENDMENTS OR TERMINATION

This Memorandum of Agreement shall take effect upon written notification by the Environmental Protection Agency to the Director of program approval by the Administrator pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972, and thereupon the Memorandum of Agreement dated July 6, 1972, between the Regional Administrator and the Director shall terminate.

This Memorandum of Agreement may be modified in writing or it may be terminated by the Regional Administrator, Region X of the Environmental Protection Agency; or the Director, State of Oregon Department of Environmental

Quality, upon 30-days' written notice to the other party. Any modifications to the Memorandum of Agreement shall become effective upon approval by the Administrator.



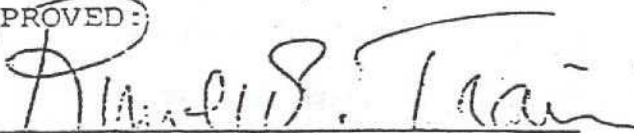
James L. Agee
Regional Administrator, Region X
Environmental Protection Agency



Diarmuid F. O'Scannlain
Director, State of Oregon
Department of Environmental Quality

Date _____

APPROVED:



Administrator
United States Environmental Protection Agency
SEP 26 1973

Date _____